

Employment Law Corner

Monthly Report



FOLEY & FOLEY^{PC}
ATTORNEYS AT LAW

November 2023

Employment Law Corner: Americans with Disabilities Act

Cutting through the Ambiguity:

The Americans with Disabilities Act (“ADA”) is consistently one of the most frequent questions we get as employment law attorneys and one of the most misunderstood laws.

Its confusion is understandable. The definition of a disability is broad: “any mental or physical impairment that substantially limits one or more major life activities.” There aren’t any strict timelines or guidelines. Unlike the FMLA-- which gives you five days to provide the paperwork to an employee, fifteen days for them to return it to you, and twelve weeks of leave exactly-- the ADA uses terms like “reasonable” and “significant difficulty.”

Aside from pinning down definitions, in many cases, employers completely forget they need to comply with this law. It becomes overlooked and then a major compliance issue.

How to Manage the ADA:

While the ADA can be difficult to wrap your head around, we have several helpful points and tools to ensure you are compliant! First, always think of the ADA as a basic three step process:

1. Engage in the interactive process;
2. Determine a reasonable accommodation; and
3. Determine if it is undue hardship.

Whenever someone presents you with a medical condition, whether that is physical or mental, this three-step process should pop into your head. Once an employee has disclosed to you that they have a disability (it can be temporary or permanent), then you are obligated to begin this three-step process.

The Interactive Process:

This is an information gathering mission. You have permission under the ADA to ask the employee for medical information if it is consistent with

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business necessity. This can include a note from the health care provider to state what the condition is and its limitations. It can be a form that you send to the health care provider to fill out or provide them with the job description, so they understand what the employee does for work.

There are no timelines for this process, so be reasonable and follow up. When it comes to discrimination cases, the court favors an employer that shows they have done their due diligence and have gone above and beyond when following up with the employee for information. The employee is also obligated to engage in the interactive process. That means that if they do not provide you with the necessary information, you are not required to accommodate.

Reasonable Accommodations

Once you have all the information about the employee's disability and potential limitations, you can then determine a reasonable accommodation. This could be unpaid leave, assistive equipment, schedule modification, job transfer, or job modifications. You do not have to select the accommodation the employee wants, and the employee must still fulfill the job's essential functions.

Undue Hardship

In looking at the potential reasonable accommodations, you will then need to evaluate whether it would be considered an undue hardship: Would it cause significant difficulty or expense? You must take the entire financial resources of the company and its effect on operations into consideration. This is generally a high standard to meet so if you do determine it is an undue hardship, be sure to support it with fact-specific reasons.

Interactions with the FMLA and State Paid Leave

As stated above, one of the accommodations that exists under the ADA is unpaid leave. This can intersect with other unpaid or paid leaves available under the law as well. Some things to pay attention to:

- If an employee is not eligible for FMLA, they may still be eligible for leave under the ADA.
- Once an employee has exhausted FMLA and still needs additional leave, you may need to apply the ADA to determine if it would be an undue hardship.
- A disability can be an extension of a serious health condition and a state paid family and medical leave – an employee may need accommodation when they return.

Our Reasonable Accommodation Toolkit

We have compiled a great resource to add calm to the chaos on disability discrimination and reasonable accommodations. Our **Reasonable Accommodation Toolkit** provides: a letter to the employee, a letter and form to the health care provider, an informed consent letter, an

undue hardship analysis, and an ADA flow chart. Please contact us for more information.

Need an ADA Accommodation Policy? Or a review of your current one? **We can help!**

Who We Are

We want to **introduce ourselves** to those we have not met:

- We represent employers exclusively from coast to coast in all facets of employment law and litigation. Our mission is solving problems and anticipating issues so you can concentrate on your business.
- We are constantly searching for trends and upcoming issues in the law that will impact our clients. We want our clients to be informed and ready. Our familiarity with the workplace and our approach sets us apart from other law firms, making us well equipped to handle your unique needs.
- We are not like other firms: Anyone can tell you what the law states and its limits. That's easy. We find creative solutions within those restrictions that move your business forward. We seek to minimize your risk so you can get back to business. Learn how we can help your business: **Foley & Foley PC attorneys specializes in Employment and Labor Law in the Public and Private Sectors (foleylawpractice.com)**

Attorney Wendy Hansen



Wendy brings a broad range of employment law skills to our team. She is the Practice Leader of the Employment Counsel On-Call Triage Service, which services thousands of clients all over the country. She has experience in handling a variety of questions and claims in employment law, including: FMLA, ADA, FLSA, criminal background checks, medical marijuana, wrongful termination, and harassment.

Wendy is the firm's Organizational Restructure and Reduction in Force Practice Leader as well as the FMLA and State-Specific Leave Law subject matter expert. She is also the lead for the firm's Education and Training Practice and has hosted and conducted hundreds of webinars to clients, covering topics and trainings for HR personnel; supervisors and mid-level managers; and standard employees.

For more info, check out her full bio **here** or email **Wendy@foleylawpractice.com** for more information!

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